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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GREEN UNITED, LLC, a Utah limited
liability company; WRIGHT W.
THURSTON, an individual; and
KRISTOFFER A. KROHN, an individual,

Defendants,

TRUE NORTH UNITED INVESTMENTS,
LLC, a Utah limited liability; and BLOCK
BROTHERS, LLC, a Utah limited liability
company,

Relief Defendants.

**MOTION FOR LEAVE TO FILE A
BRIEF AMICI CURIAE IN SUPPORT OF
DEFENDANTS' RULE 12(B)(6)
MOTIONS TO DISMISS**

Case No. 2:23-cv-00159

Judge Bruce S. Jenkins

Jake Dieterich, Bronson Kaufusi, and other similarly situated GREEN holders and users, including the individuals listed on Appendix A, respectfully move this Court for leave to file a brief as *amici curiae* in support of the defendants' Motion to Dismiss. *See* DUCivR 7-6.

This Court has broad discretion to allow the filing of an amicus brief in this case. *See Friends of Animals v. U.S. Fishing and Wildlife Serv.*, Case No. 4:18cv00053, 2021 WL 4440347, *1 (D. Utah 2021); DUCivR 7-6. This motion is timely under DUCivR 7-6(e) because it is being filed within 14 days of the moving party's motion: the defendants' Motions to Dismiss. ECF No. 23.

In support of their motion, the *amici* state the following.

THE AMICI'S INTEREST

The *amici* are individuals who purchased the hardware and software sold by Green United, have been using it since their purchase, and who hold GREEN rewards. At various times from Green United's inception until 2022, the amici purchased GREEN boxes (hardware), GREEN nodes (software), or both. The amici represent the interests of the broader GREEN community, which is international in scope. The amici themselves live in numerous countries. There are thousands of similarly-situated purchasers and users in the GREEN community, whose involvement and activity in the GREEN project vary.

Based on their purchase and use of the hardware and software at issue in this case, the amici have a significant interest in the outcome of this case. Whether their work to date on the GREEN network retains the value they built, and whether their creativity can take shape on the GREEN network, is directly tied to the outcome of this case and whether the SEC prevails.

Moreover, their unique perspective as purchasers and users of GREEN is not currently represented by the parties. This case involves difficult issues at the forefront of securities law and the SEC's enforcement actions related to blockchain use and cryptocurrencies. Here, the SEC alleges that the contracts by which the *amici* purchased their hardware and software are "investment contracts" and thus subject to securities laws. This is a significant claim. And it has

significant repercussions to these *amici*, other similarly-situated GREEN users, and many others around the country who participate in other blockchain projects and hold other digital assets. The *amici* offer the perspective of users who, independent of the defendants, use the hardware and software they bought as a tool to participate in a larger project of using blockchain technology to address the issues of energy consumption and cost.

USEFULNESS OF THE *AMICI* TO THE DISPOSITION OF THE CASE

The *amici*'s perspective will help ensure a complete presentation of the issues so that this Court understands the "economic reality" of the transactions at issue. *See Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (in determining whether an "investment contract" exists, emphasis should be on economic reality."); *see Federal Trade Comm'n v. Zurixx, LLC*, Case No. 2:19CV713, 2020 WL 6898341, *2 (D. Utah 2020) ("when determining whether a common enterprise exists, the pattern and frame-work of the whole enterprise must be taken into consideration") (internal quotations omitted). As parties to the transactions that the SEC believes to be investment contracts, and as the supposed-victims of what the SEC believes to be the fraud that induced those transactions, the *amici* provide a unique perspective on the legal and factual questions at stake.

As other courts have done in similar SEC actions, the amici ask the Court to consider their perspective in ruling on the defendants' Rule 12(b)(6) Motion to Dismiss. *See, e.g., S.E.C. v. Ripple Labs, Inc.*, Case No. 1:20CV10832 (S.D.N.Y.), ECF No. 372 (order granting amicus status).

CONSENT OF THE PARTIES

The defendants consent to the *amici*'s participation. By email dated May 31, 2023, counsel for the plaintiff stated that the plaintiff could not take a position on consenting without seeing an

advance copy of the *amici's* brief. With the motion and proposed brief filed, the plaintiff can now provide its view to the court.

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Pursuant to DUCivR 7-6, the *amici* have attached to this Motion a proposed order for entry, as well as their proposed Brief *Amici Curiae*.

DATED this 2nd day of June, 2023.

ARMSTRONG TEASDALE LLP

/s/ Charles D. Morris

Charles D. Morris

John P. O'Herron
Zachary D. Cohen
ThompsonMcMullan, P.C.

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2023, I caused a true and correct copy of the foregoing to be served upon all parties of record via the Court's Electronic Filing System.

/s/ Shelby K. Irvin